Supreme Court, U.S.
FILED
JAN 10 1996
CLERK

No. 95-900

In The

Supreme Court of the United States

October Term, 1995

MUTUAL TRADING CORPORATION, MOHAMMED SHAFIQ, and JOHN HAUPER,

Petitioners,

v.

UNIROYAL GOODRICH TIRE CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

Petitioners Mutual Trading Corporation, Mohammed Shafiq and John Hauper, herewith reply to the respondent's Brief in Opposition and urge this Court to issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

I.

Additional Statement of the Case

The respondent faults the petitioners for failing to discuss in detail UGTC's allegations and evidence regarding its many RICO claims (Br. p. 2). The petitioners intentionally omitted such a discussion because the verdict makes clear that the jury gave UGTC's RICO claims little consideration. The jury verdict as well as the respondent's brief in opposition makes this point obvious.

UGTC claimed at trial (and does so again in its Brief in Opposition) that the petitioners engaged in *six* schemes to defraud (predicate acts) which caused the following RICO damages:

A.	"The Detroiter Scheme" (Br. 5)	$ 200,000.00
B.	"The Cooperative Advertising Scheme" (Br. 6)	$ 300,000.00
C.	"The Volume Bonus Scheme" (Br. 6)	$ 230,000.00
D.	"The Reno Scheme" (Br. 7)	$ 144,000.00
E.	"Pricing Concessions" (Br. 7)	$ 150,000.00

F.	"Fraudulent Financial Statements" (Br. 8)	$1,100,000.00
	Total	$2,124,000.00

In addition to the $2 million damages UGTC sought for the above RICO "frauds," it also sought damages for a variety of alleged state torts. Notably, the jury awarded UGTC a *total* of $156,000 in compensatory damages on its *combined* RICO and state tort claims. It is beyond reasonable debate that the jury utterly rejected UGTC's theory of multiple schemes.

The respondent implies that UGTC was the recipient of a $2.8 million RICO judgment (Br. 9, 13-15). That is not so. Mutual Trading Corporation owed UGTC $1.8 million on open accounts. That claim was uncontested.[1] Consequently, more than $2 million of the judgment was based on non-tort, non-RICO, non-fraud, breach of contract claims. The balance of the judgment was the $156,000 RICO/tort combined award plus punitive and trebled damages (i.e., the "quintupled damages").

REASONS WHY THE WRIT SHOULD BE GRANTED

A. There Is No Pattern Of Racketeering Activity

The petitioners correctly focused on the verdict actually returned, rather than respondent's RICO allegations, when assessing whether UGTC proved a pattern of racketeering activity. The respondent claimed well over $2

[1] The $220,000 Reno tire claim was the *only* open account claim contested at trial.

million in RICO damages based upon six alleged schemes to defraud.[2] The purported multiplicity of schemes was essential because under *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1986) and *H.J. Inc. v. Northwestern Bell*, 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195, 208 (1988), UGTC was obliged to prove that the petitioners engaged in *continuing* criminal activity. Without such evidence, UGTC's RICO claims must fail.

It is evident that the jury rejected UGTC's claims of multiple predicate acts. Had it found petitioners guilty of such frauds, the damages awarded would have been commensurate with the damages suffered by UGTC.[3] Although the jury checked the boxes on the verdict form finding in favor of UGTC on its 18 U.S.C. 1962 claims (App. C), its modest damage award belies the conclusion that it found the petitioners guilty of multiple schemes to defraud. Consequently, UGTC's argument (Br. 10-13) that it established a "pattern of racketeering activity" is without any basis in fact.

UGTC *alleged* multiple schemes and recovered damages. However, the damage award undermines UGTC's theory that the jury found the petitioners guilty of a multiplicity of schemes to defraud. Consequently, the District Court and the Seventh Circuit Court of Appeals clearly misapplied the *Sedima* and *H.J., Inc.* "pattern of racketeering" test to the facts in this case.

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[2] Although the petitioners denied liability, they did not dispute the amount of damages if liability was found against them.

[3] There is nothing in the record to suggest that the jury verdict was a "compromise" between damages and liability.

B. The $1.4 Million Fee Award Was Erroneous As A Matter Of Law

UGTC spent $1.4 million dollars in attorneys' fees and costs to recover $156,000 in compensatory damages on its combined RICO and state tort claims and $220,000 on the Reno tire open account claim. Title 18 U.S.C. § 1964 permits an award of costs and *reasonable* attorneys' fees. The Seventh Circuit essentially held that so long as there is a recovery, however modest, any amount of time actually spent in securing that recovery is compensable. The petitioners assert that the fees in this case constitute a penalty not contemplated by the RICO Act. They further assert that the award is contrary to this Court's holding of *Blum v. Stenson*, 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984). The fees awarded are not reasonably related to the result obtained and constitute a penalty not authorized by the RICO Act.

C. The Award Of Both Treble And Punitive Damages For The Same Conduct Is Not Proper

UGTC erroneously states (Br. 16) that the petitioners did not raise this argument in their appeal to the Seventh Circuit. The petitioners argued on page 36 of their opening brief before the Seventh Circuit,

> In addition to RICO damages, which the trial court trebled, the jury also awarded punitive damages against the defendants (R430). The net result of this is that the plaintiff was awarded quadruple damages for its alleged injuries. In that RICO damages are intended to be punitive in character, punitive damages are not available,

In re VMS Securities Litigation, 752 F.Supp. 1373, 1404 (N.D. Ill. 1990).[4]

UGTC's assertions that the trebling of a RICO award is mandatory under 18 U.S.C. § 1964(c) and that Illinois law permits punitive damages for fraud actions do not support the proposition that *both* are justified in any circumstance. In that RICO's trebled damages are intended to punish the defendants, punitive damage are duplicative and are unwarranted.

CONCLUSION

For the foregoing reasons, the petitioners urge this Court to grant the writ.

Respectfully submitted,

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[4] While the petitioners characterized the judgment as "quadruple damages" in the Seventh Circuit, it actually approximates a quintupling of the compensatory damage award.